

Laws of His Majesty's Province of Upper Canada in North America, passed in the year 1824.
York: Charles Fothergill, 1824.

5 George IV – Chapter 4

An Act to Repeal an Act passed in the Forty-Fifth Year of His Late Majesty's Reign, entitled, "An Act to Regulate the Trial of Controverted Elections, or Returns of Members to Serve in the House of Assembly and to make more Effectual Provision for such Trials. Passed Jan. 19th, 1824.

Whereas the present mode of decision upon Petitions complaining of Undue Elections or Returns of Members to serve in Parliament, frequently obstructs public business, occasions much expense, trouble, and delay to the parties, and is attended with many other inconveniences:— For remedy whereof

Be It Therefore Enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an Act passed in the Parliament of Great Britain, entitled, "*An Act to Repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled, 'An Act for making more effectual Provision for the Government of the Province of Quebec, in North America, and to make further Provision for the Government of the said Province;'*" and by the authority of the same,— That an Act of the Parliament of this Province, passed in the forty-fifth year of His Late Majesty's Reign, entitled, "*An Act to Regulate the Trial of Controverted Elections, or Returns of Members to Serve in the House of Assembly,*" be, and the same is hereby repealed.

II. And be it further Enacted by the authority aforesaid, That after the passing of the present Act, whenever a Petition complaining of an Undue Election, or return of a Member, or Members, to serve in Parliament, shall be presented to the House of Assembly; a day and hour shall by the said House of Assembly be appointed for taking the same into consideration; and notice thereof, in writing, shall be forthwith given by the Speaker to the Petitioner or Petitioners, and the sitting Member or Members, or their respective agents, accompanied with an order to them to attend the House at the time appointed, by themselves their counsel, or agents: And if several parties, on distinct interests or grounds of complaint, shall present separate petitions, the like notices and orders shall be given to all such parties, or their respective agents.

III. And be it further Enacted by the authority aforesaid, That no such petition or petitions shall be taken into consideration within Fourteen Days after the same shall have been first read in the House by the Clerk, unless by consent of parties.— Provided also, That the House may alter the day and hour so appointed for taking into consideration such petition, and appoint some subsequent' day and hour for the same, as occasion shall require, giving to the respective parties the like notice of such alteration, and order to attend on the said subsequent day and hour, as aforesaid.

IV. And be it further Enacted by the authority aforesaid. That at the time appointed for taking such petition into consideration, and previous to the reading of the order of the day for that purpose, the Serjeant at Arms shall be directed to go with the Mace to the places adjacent, and require the immediate attendance of the Members, on the business of the House, and that after his return, the House shall be counted, and if there shall be less than thirty Members present, the order for taking such petition into consideration shall be immediately adjourned to a particular hour on the following day, (Sunday, Good Friday, and Christmas Day always excepted;) and the House shall then adjourn to the said day, and the proceedings of all Committees subsequent to such notice from the said Serjeant, shall be void; and on the said following day the House shall proceed in the same manner, and so from day to day, till there shall be an attendance of Thirty Members at the reading the order of the day to take such petition into consideration.

V. And be it further Enacted by the authority aforesaid, That if after the summoning the Members and counting the House, as aforesaid, thirty Members shall be found present, the Petitioners, by themselves, their counsel, or agents, and the counsel or agents of the sitting Member or Members, shall be ordered to attend at the Barr, and then the door of the House shall be locked, and no Member shall be suffered to enter into, or depart from, the House, until the Petitioners, their counsel, or agents for the sitting Member or Members, shall be directed to withdraw, as hereinafter mentioned; and when the door shall be locked as aforesaid, the order of the day shall be read, and the names of all the Members of the House written or printed on district pieces of parchment or paper, being all, as near as may be, of equal size, and rolled up in the same manner, shall be put in equal numbers, as near as may be, into three boxes or glasses, to be placed on the table for that purpose, and shall then be shaken together; and then the Clerk shall publicly draw out of the said three boxes or glasses alternately the said pieces of parchment or paper, and deliver the same to the Speaker, to be by him read to the House, and so shall continue to do until twenty three names of the Members then present be drawn.— Provided always, that if the name of any Member who shall have given his vote at the Election so complained of, as aforesaid, or who shall be a petitioner complaining of an undue Election or Return, or against whose Return a Petition shall be then depending, or whose Return shall not have been brought in Fourteen Days, shall be drawn, his name shall be set aside, with the names of those who are absent, from the House.— Provided also, That if the name of any Member of sixty years of age, or upwards, be drawn, he shall be excused from serving on the Select Committee to be appointed, as herein-after mentioned, if he require it and verify the cause of such requisition upon oath. — Provided also, That if the name of any Member who has served in such Select Committee during the same Session be drawn, he shall, if he require it, be excused from serving again in any such, Select Committee, unless the House shall, before the day appointed for taking the said Petition into consideration, have resolved that the number of Members who have not served on such Select Committee in the same Session is insufficient to fulfil the purposes of this Act, respecting the choice, of such Select Committee.— Provided always That no Member who, after having been appointed to serve in any such Select Committee, shall, on account of inability or accident, have been excused from attending the same throughout, shall be deemed to have served on any such Select Committee.

VI. And be it further Enacted by the authority aforesaid, Then if at the time of drawing by lot the names of the Members, in manner herein-before prescribed, the number of twenty-three, not set aside nor excused, cannot be completed, the House shall proceed in the same manner as is herein-before directed, in case there be less than thirty Members present at the time prescribed for Counting the House; and so from day to day, as often as the case shall happen.

VII. And be it further Enacted by the authority aforesaid, That on the day appointed for taking any such Petition into consideration, the House shall not proceed to any other business except the Swearing of Members, previous to the reading of the order of the day for that purpose.

VIII. And be it further Enacted by the authority aforesaid, That if any other Member shall offer, and verify upon oath, any other excuse, the substance of the allegations, so verified upon oath, shall be taken down by the said Clerk, in order that the same may be afterwards entered on the Journals, and the opinion of the House shall be taken thereon; and if the House shall resolve that the said Member is unable to serve, or cannot, without great and manifest detriment, serve in such Select Committee, he also shall be excused from such service.

IX. And be it further Enacted by the authority aforesaid, That instead of the Members so set aside and excused, the names of other Members shall be drawn, who may, in like manner, be set aside or excused, and others drawn to supply their places, until whole number of Members, not liable to be set aside or excused, shall be complete; and the Petitioners, or their Agents, shall then name one, and the Sitting Members, or their Agents, another, from among the Members then present, whose names shall not have been drawn, to be added to those who shall have been so chosen by lot.— Provided always, That either of the Members so nominated, shall or may be set aside for any of the same causes as those chosen by lot, or shall, if he require it, be excused from serving on the said Select Committee; and the party who nominated the Member so set aside or excused, shall nominate another in his stead, and so continue to do, as often as the case shall happen, until his nominee is admitted.

X. And be it further Enacted by the authority aforesaid, That as soon as the said twenty-three Members shall have been so chosen, by lot, and two Members to be added thereto shall have been so nominated, as aforesaid, the door of the House shall be opened, and the House may proceed upon any other business; and the names of the twenty-three Members so chosen, by lot, shall then be given to the Petitioners, their Counsel, or Agents, and the Counsel or Agent of the Sitting Members, who shall immediately withdraw, together with the Clerk appointed to attend the said Select Committee; and the said Petitioners and Sitting Members, their Counsel or Agents, beginning on the part of the Petitioners, shall alternatively strike off one of the said twenty-three Members, until the said number be reduced to nine; and the said Clerk, within the time of the parties withdrawing from the House, shall deliver into the House the names of the nine Members then remaining, and the said nine Members, together with the two Members nominated as aforesaid, shall be sworn at the table well and truly to try the matter of the Petition referred to them, and a true judgment to give, according to the evidence; and shall be a Select Committee to try and determine the merits appointed by the House to be that day taken into consideration; and the House shall order the said Select Committee to meet at a certain time, to be fixed by the

House, which time shall be within twenty-four hours of the appointment of the said Select Committee, (unless a Sunday, Good Friday, or Christmas Day, shall intervene,) and the place of their meeting and sitting shall be some convenient room or place adjacent to the House of Assembly, properly prepared for that purpose—Provided always, That upon the parties withdrawing, as aforesaid, the House shall continue sitting, and the said nine Members, so chosen and nominated, shall not depart the House till the time for the meeting of the said Select Committee shall be fixed.

XI. And be it further Enacted by the authority aforesaid, That if in such Petition or Petitions there be more than two parties before the House on district interests, complaining or complained of on different grounds, whose right to be elected or returned may be affected by the determination of the said Select Committee, each of the said parties shall successively strike off a Member from the twenty-three Members to be chosen by lot, until the said; number be reduced to nine, in the same manner as before directed for the striking off a Member, alternately, by the parties mentioned in the last clause; and the lists of the twenty-three Members chosen by lot, shall, for this purpose, be given to all the said parties, and the order in which the said parties shall strike off the said Members shall be determined by lot, after they are withdrawn from the Bar, and in such case, neither of the said parties (there being more than two) shall be permitted to name a Member to be added to the numbers so drawn by lot, as aforesaid, but as soon as the list of nine Members shall be returned by the parties to the House, such nine Members shall immediately withdraw, and shall, by themselves, choose two Members, then present in the House, whose names shall not have been drawn, to be added to the said nine Members and shall, within one hour from the time of their withdrawing, report the names of such two Members to the House; which two Members shall be liable to be set aside on the like objections for which Nominees may be set aside, by virtue of this Act: And in case such two Members, or either of them, shall be set aside for any of the causes aforesaid, then the said nine Members shall choose one or two other Members, as the case shall require, until two Members are chosen against whom none of the objections to Nominees mentioned in this Act shall be taken and allowed; and that the names of such two Members shall be then added to the said list of nine Members; and all the said eleven Members shall be sworn at the table, and they shall be the Select Committee appointed for the purposes expressed in this Act.

XII. And be it further Enacted by the authority aforesaid, That when the said Nominees are by this Act directed to be named by the said nine Members, no Member present at the time of the ballot shall depart from the House until the time of the meeting of the said: Select Committee shall be fixed.

XIII. Provided always, And be it further Enacted by the authority aforesaid, That if upon the drawing out the name of any Member, by lot, as aforesaid, the said Petitioners, or sitting Members, or their Agents, shall declare, that such member is intended to be one of the two Nominees, to be nominated by them respectively, and if such member shall consent to such nomination, the name of such member, so drawn by lot, shall be set aside, and, unless objected to, as aforesaid, he shall serve as such Nominee, and the name of another member shall be drawn to supply his place, to complete the number of twenty-three members to be drawn by lot; and if

the said Petitioners, or sitting members, or their Agents, shall not respectively nominate a member then present, who shall be admitted according to the directions of this Act, then the want of such nomination shall be supplied by drawing out, instead thereof, the name of one or two members, as the case shall require, who shall be drawn by lot, in the like manner, and subject to the like objections and excuses as the other twenty-three members already drawn by lot, and shall be added to the list of the said twenty-three members, and shall be liable to be struck off in the same manner, leaving always the number of eleven members in the whole, and no more, as a Select Committee, for the purposes aforesaid.

XIV. And be it further Enacted by the authority aforesaid, That it upon any writ or writs, to be issued for the election of any member or members to serve in Parliament, no return shall be made to the same on or before the day on which such writ is made returnable, or if a writ shall have been issued during any Session or Prorogation of Parliament, no return shall be made to the same within forty days after the day on which such writ bears date, it shall and may be lawful for any person, or persons, having had, or claiming to have had, a right to vote at such Election, or claiming to have had a right to be returned as duly elected thereat, who shall think himself, or themselves aggrieved, to petition the House of Assembly concerning the same, and, upon such Petition being presented, a day and hour shall be appointed for taking the same into consideration; and notice thereof, in writing, shall be forthwith given by the Speaker to the Petitioners, and to the Returning Officer, or Officers, by whom such return ought to have been made, or shall have been made, accompanied with an order to him, or them to attend the House at the time appointed, by himself, or themselves, his or their counsel or agents; and a Select Committee shall be appointed according to the directions of this Act, which said Committee shall try and determine whether any, and which of the person, or persons, named in such Petition ought to have been returned, or whether a new writ ought to issue; which determination shall be final to all intents and purposes, and the House being informed thereof by the Chairman of the said Select Committee, shall order the same to be entered in their Journals, and give the necessary directions for ordering a return to be made, or for altering the return, if made, or for issuing a new writ for a new election, or for carrying the said determination into execution, as the case may require.— Provided always, That if the Returning Officer, or Officers, by whom such return ought to have been made, or has been made, cannot be found, so as to be served with the notice or order herein-before mentioned, or, being served, shall not appear by himself or themselves, his or their counsel or agents, at the day or time appointed for taking such Petition into consideration, it shall and may be lawful for the House to permit or authorise any person to appear in the stead of him, or them; and in case there shall be more petitions than one presented, complaining of such return, or omission of a return on distinct interests, or complaining upon different grounds, the House shall determine, from the nature of the case, whether the Returning Officer, or Officers, or person appearing in the stead of him, or them, shall, together with such Petitioners, be entitled to strike off from the list of Members, drawn by lot in the manner herein-before directed in the case where there shall be more than two parties before the House, or whether such list shall be reduced by the parties severally presenting the said Petitions only.

XV. And for the greater despatch and certainty in the proceeding herein-before described, Be it further Enacted by the authority aforesaid, That the names of all the Members so written and

rolled up, as herein-before directed, shall, previous to the day appointed for taking such Petition into consideration, be prepared by the said Clerk, and by him put into a box, or parcel, in the presence of the Speaker, together with an attestation signed by the said Clerk, purporting that the names of all the members were by him put therein the _____ day of _____ in _____ the _____ year which said box or parcel the Speaker shall seal with his own seal, and to the outside thereof shall annex an attestation signed by himself, purporting that the said box or parcel, was, on the _____ day _____ of _____, in the _____ year, made up in this presence in the manner directed by this Act; and that as soon as the parties shall be withdrawn, as aforesaid, and before the House shall enter on any other business, any member may require that the names of all the members, which remain undrawn, shall be drawn and read aloud by the said Clerk.

XVI. And be it further Enacted by the authority aforesaid, That the said Select Committee shall, on their meeting, elect a Chairman from amongst such of the members thereof as shall have been chosen by lot; and if, in the election of a Chairman, there be an equal number of voices, the member whose name was first drawn in the House, shall have a casting voice, so likewise, in case there should ever be occasion for electing a new Chairman, on the death or necessary absence of the Chairman first elected.

XVII. And be it further Enacted by the authority aforesaid, That the said Select Committee shall have power to send for persons, papers, and records, and shall examine all the witnesses who come before them upon oath, and shall try the merits of the return or election, or both, and shall determine, by a majority of voices of the said Select Committee, whether the Petitioners, or the sitting Members, or either of them, be duly returned or elected, or whether the Election be void, which determination shall be final between the parties to all intents and purposes; and the House being informed thereof by the Chairman of the said Select Committee, shall order the same to be entered on their Journals, and give the necessary directions for confirming or altering the return, or for the issuing of a new writ for a new Election, or for carrying the said determination into execution, as the case may require.

XVIII. And be it further Enacted by the authority aforesaid, That the said Select Committee shall sit every day, (Sunday, Christmas Day, and Good Friday, only excepted,) and shall never adjourn for a longer time than twenty-four hours, unless a Sunday, Christmas Day, or Good Friday, intervene, without leave first obtained from the House, upon motion and special cause assigned for a longer adjournment; and in case the House shall be sitting at the time to which the said Select Committee is adjourned, then the business of the House shall be stayed, and a motion shall be made for a further adjournment for any time to be fixed by the House, not exceeding twenty-four hours, unless a Sunday, Christmas Day, or Good Friday intervene.

XIX. And be it further Enacted by the authority aforesaid, That when the time prescribed for the meeting, sitting, or adjournment of the said Select Committee shall, by the intervention of a Sunday, Christmas Day, or Good Friday exceed twenty-four hours, such meeting, sitting, or adjournment, shall be within twenty-four hours of the time of appointing or fixing the same; exclusive of such Sunday, Christmas Day, or Good Friday.

XX. And be it further Enacted by the authority aforesaid, That no member of the said Select Committee shall be allowed to absent himself from the same without leave obtained from the House, or an excuse allowed by the House at the next sitting thereof, or special cause shewn, and verified upon oath and the said Select Committee shall never sit until all the members, to whom such leave has not been granted, nor excuse allowed, are met; and in case they shall not all meet within one hour after the time to which the said Select Committee shall have been adjourned, a further adjournment shall be made in the manner as before directed, and reported, with the cause thereof, to the House.

XXI. And be it further Enacted by the authority aforesaid, That the Chairman of the said Select Committee shall, at the next meeting of the House, always report the name of every Member there of who shall have been absent therefrom without such leave or excuse, as aforesaid, and such Member shall be directed to attend the House at the next meeting thereof, and shall then be ordered to be taken into the custody of the Serjeant at Arms attending the House, for such neglect of his duty, and otherwise punished or censured at the discretion of the House, unless it shall appear to the House, by facts specially stated and verified upon oath, that such Member was, by a sudden accident, or by necessity, prevented from attending the said Select Committee.

XXII. And be it further Enacted by the authority aforesaid, That if more than two Members of the said Select Committee shall, on any account, be absent therefrom, the said Select Committee shall adjourn in the manner herein-before directed; and so from time to time, until nine Members are assembled.

XXIII. And be it further Enacted by the authority aforesaid, That in case the number of Members able to attend the said Select Committee shall, by death or otherwise, be unavoidably reduced to less than nine, and shall so continue for the space of three sitting days, the said Select Committee shall be dissolved, and another chosen, to try and determine the matter of such Petition, in manner aforesaid; and all the proceedings of the said former Select Committee shall be void, and of no effect.

XXIV. And be it further Enacted by the authority aforesaid, That if the said Select Committee shall come to any resolution other than the determination abovementioned, they shall, if they think proper, report the same to the House for their opinion, at the same time that the Chairman of the said Select Committee shall inform the House of Such determination, and the House may confirm, or disagree with, such resolution, and make such orders thereon as to them shall seem proper.— Provided always, That if any person summoned by the said Select Committee shall disobey such summons, or if any witness' before such Select Committee shall prevaricate, or shall otherwise misbehave, in giving, or refusing to give, evidence, the Chairman of the said Select Committee by their direction, may at any time during the course of their proceedings, report the same to the House for the interposition of their authority or censure, as the case shall require.

XXV. And be it further Enacted by the authority aforesaid, That whenever the said Select Committee shall think it necessary to deliberate, amongst themselves, upon any question which

shall arise in the course of the trial, or upon determination thereof, or upon any resolution concerning the matter of the petition referred to them, as aforesaid, as soon as the said Select Committee shall have heard the evidence and counsel on both sides relative thereunto, the room, or place wherein they shall sit shall be cleared if they shall think proper, while the Members of the said Select Committee consider thereof; and all such questions, as well as such determination, and all other resolutions, shall be by a majority of voices, and if the voices shall be equal, the Chairman shall have a casting voice.— Provided always, That no such determination, as aforesaid, shall be made, nor any question be proposed, unless nine Members shall be present; and no Member shall have a vote on such determination, or on any other question or resolution, who has not attended during every sitting of the said Select Committee.

XXVI. And be it further Enacted by the authority aforesaid That the oaths by this Act directed to be taken in the House, shall be administered by the said Clerk, in the same manner as the oath of allegiance is administered in the House of Assembly; and that the oaths by this Act directed to be taken before the said Select Committee, shall be administered by the Clerk attending the said Select Committee, and that all persons who shall be guilty of wilful and corrupt perjury in any evidence which they shall give before the House, or the said Committee, in consequence of the oath which they shall have taken by the direction of this Act, shall, on conviction thereof, incur and suffer the like pains and penalties to which any other person, convicted of wilful and corrupt perjury, is liable by the laws and statutes of this Province.

XXVII. And be it further Enacted by the authority aforesaid, That no proceeding shall be had upon any Petition by virtue of this Act, unless the person, or persons, subscribing the same, or one or more of them, shall, within fourteen days after the same shall have been presented to the House, or within such further time as shall be limited by the House, personally enter into a recognizance to our Sovereign Lord the King, according to the form hereunto annexed, in the sum of One Hundred Pounds, with two sufficient sureties in the sum of Fifty Pounds each, to appear before the House at such time, or times, as shall be fixed by the House for taking such Petition into consideration; and also to appear before any Select Committee which shall be appointed by the House for the trial of the same, or until the same shall have been withdrawn by permission of the House; and if, at the expiration of the said fourteen days, such recognizance shall not have been so entered into, the Speaker shall report the same to the House, and the order for taking such petition into consideration shall thereupon be discharged, unless upon matter specially stated and verified to the satisfaction of the House, the House shall see cause to enlarge the time for entering into such recognizance; and whenever such, time shall be so enlarged, the order for taking such petition into consideration shall, if necessary, be postponed; so that no such petition shall be taken into consideration till after such recognizance shall have been entered into, and received by the Speaker.— Provided always, That the time for entering into such recognizance shall not be enlarged more than once, nor for any number of days exceeding twenty.

XXVIII. And be it further Enacted by the authority aforesaid, That the said recognizance shall be entered into before the Speaker of the House of Assembly, who is hereby authorised and empowered to take the same, and the sufficiency of the sureties named therein shall be judged of and allowed by the said Speaker.

XXIX. And be it further Enacted by the authority aforesaid, That if the Petitioner or Petitioners who shall have entered into such recognizance, as aforesaid, shall not appear before the House by himself or themselves, or by his or their counsel or agents, within one hour after the time fixed, in pursuance of this Act, for calling on the respective parties, their counsel or agents, for the purpose of proceeding to the appointment of a Select Committee, or if the Select Committee appointed, in pursuance of this Act, for the trial of such petition, shall inform the House that such person or persons did not appear before the said Committee, by himself or themselves, or by his or their counsel or agent, to prosecute their said petition, or if such person or persons shall neglect to renew their said petition within four sitting days after the day of the commencement of every Session of the same Parliament, subsequent to that to which such petition was first presented, and until a Select Committee shall have been appointed for the trial of the same, or until the same shall have been withdrawn by the permission of the House, in every such case such person or persons shall be held to have made a default in his or their said recognizance; and the Speaker of the House of Assembly shall thereupon certify such recognizance into the Court of King's Bench, and shall also certify that such person or persons have made default therein; and such certificate shall be conclusive evidence of such default; and the recognizance being so certified, shall have the same effect as if the same were estreated in a court of law. — Provided always, That such recognizance and certificate shall in every such case be delivered by the Clerk of the House of Assembly into the hands of the Chief Justice of the Court of King's Bench.

XXX. And be it further Enacted by the authority aforesaid, That every such Committee, at the same time that they report to the House their final determination on the merits of the petition which they were sworn to try, shall also report to the House whether such petition did or did not appear to them to be frivolous or vexatious; and they shall in like manner report with respect to every party or parties who shall have appeared before them in opposition to such petition, whether the opposition of such party or parties respectively did, or did not, appear to them to be frivolous or vexatious; and that if no party shall have appeared before them in opposition to such petition, they shall then report to the House whether such Election or Return, or such alleged insufficiency of a Return as shall be complained of in such petition, according as the case shall be, did, or did not appear to them to be vexatious or corrupt.

XXXI. And be it further Enacted by the authority aforesaid, That whenever any such Committee shall report to the House, with respect to any such petition, that the same appeared to them to be frivolous or vexatious, the party or parties, if any, who shall have appeared before the Committee in opposition to such petition, shall be entitled to recover from the person or persons, or any of them, who shall have signed such petition, the full costs and expenses which such party or parties shall have incurred in opposing the same, such costs and expenses to be ascertained in the manner hereinafter directed.

XXXII. And be it further Enacted by the authority aforesaid, That whenever any such Committee shall report to the House with respect to the opposition made to such petition by any party or parties who shall have appeared before them, that such opposition appeared to them to be frivolous or vexatious, the person or persons who shall have signed such petition shall be entitled

to recover from such party or parties, or any of them, with respect to with whom such report shall be made, the full costs and expenses which such Petitioner or Petitioners shall respectively have incurred in prosecuting their said petition, such costs and expenses to be ascertained in the manner herein-after directed.

XXXIII. And be it further Enacted by the authority aforesaid, That whenever in my case, where no party shall have appeared before such Committee in opposition to such petition, such Committee shall report to the House with respect to the Election or Return, to the alleged omission of a Return, or to the alleged insufficiency of a Return, complained of in any such petition, that the same appeared to them to be vexatious or corrupt, die person or persons who shall have signed such petition shall he entitled to recover from the Sitting Member, or Sitting Members (if any,) whose Election or Return shall be complained of in such petition, such Sitting Member, or Sitting Members, not having given notice of his or their intention not to defend the same, or from any other person or persons whom the House shall have admitted or directed to be made a party, or parties, to oppose such petition, the lull costs and expenses which such Petitioner or Petitioners shall have incurred in prosecuting their said petition; such costs and expenses to be ascertained in the manner herein-after directed.

XXXIV. And be it further Enacted by the authority aforesaid, That in the several cases herein-before mentioned, the costs and expenses of prosecuting or opposing any such petition shall be ascertained in manner following, that is to say: — That on application made to the Speaker of the House of Assembly by such Petitioner or Petitioners, or party or parties, as before mentioned, for ascertaining such costs and expenses, he shall direct the same to be taxed by the Clerk of the House, and the Clerk of the Crown in Chancery; and the persons so authorised and directed to tax such costs and expenses, shall, and they are hereby required to examine the same, and report the amount thereof to the Speaker of the said House, who shall, on application made to him, deliver to the party or parties a certificate, signed by himself, expressing the amount of the costs, and expenses allowed in such report; and the persons so appointed to tax such costs, and report the amount thereof, are hereby authorised to demand and receive, for such taxation and report, such fees as shall from time to time be fixed by any resolution of the House.

XXXV. And be it further Enacted by the authority aforesaid, That it shall and may be lawful for the party or parties entitled to such costs and expenses, or his, her, or their Executors or Administrators, to demand the whole amount thereof, so certified as above, from any one or more, of the persons respectively, who are herein-before made liable to the payment thereof, in the several cases herein-before mentioned; and in case of nonpayment thereof, to recover the same by action of debt in His Majesty's Court of King's Bench in this Province; in which action it shall be sufficient for the Plaintiff or Plaintiffs to declare that the Defendant or Defendants is or are indebted to him or them (in the sum to which the costs and expenses, ascertained in manner aforesaid, shall amount,) by virtue of this Act, and the certificate of the Speaker of the House of Assembly, under his signature, of the amount of such costs and expenses, together with an examined copy of the entries in the Journals of the House of Assembly of the resolution or resolutions of the said Select Committee or Committees, shall be deemed full and sufficient evidence in the support of such action of debt. — Provided always, That in every such action of

debt, no wager of law, or more than one imparlance shall be allowed; and the party or parties in whose favour judgment shall be given in any such action, shall recover his or their costs.

XXXVI. And be it further Enacted by the authority aforesaid, That in every case when the amount of such costs and expenses shall have been so recovered from any person or persons, it shall and may be lawful for such person or persons to recover in the like manner from the other persons, or any of them, if such there shall be, who shall be liable to the payment of the said costs and expenses, a proportionable share thereof, according to the number of persons so liable.

XXXVII. And be it further Enacted by the authority aforesaid, That whenever it shall happen that the Parliament shall be prorogued while any Select Committee shall be sitting for the trial of any such petition, as aforesaid, and before they shall have reported to the House their determination thereon, such Committee shall not be dissolved by such prorogation, but shall be thereby adjourned to twelve of the clock on the day immediately following that on which Parliament shall again meet for the despatch of business, (Sundays, Good Fridays, and Christmas Days, always excepted;) and all former proceedings of the said Committee shall remain and continue to be of the same force and effect as if the Parliament had not been so prorogued; and such Committee shall meet on the day and hour to which it shall be so adjourned, and shall thenceforward continue to sit from day to day, in the manner provided in this Act, until they shall have reported to the House their determination on the merits of such petition.

XXXVIII. And, be it further Enacted by the authority aforesaid, That this Act shall be, and continue in force for and during the term of Two Years, and from thence to the end of the then next ensuing Session of Parliament, and no longer.

Form Of The Recognizance Referred To In This Act.

Be It Remembered, That on the _____ day of _____, in the Year of Our Lord _____, before me, A. B. [Speaker of the House of Assembly,] came C. D., E. F., and I. G., and severally acknowledged themselves to owe to Our Sovereign Lord the King the following sums, that is to say:— The said C. D. the sum of One Hundred Pounds, and the said E. F. and the said I. G. the sum of Fifty Pounds each, to be levied on their respective Goods and Chattels, Lands and Tenements, to the use of our said Sovereign Lord the King, His Heirs and Successors, in case the said C. D. shall fail in performing the Condition hereunto annexed.

The Condition of this Recognizance is,— That if the said C. D. shall only appear before the House of Assembly at such time or times as shall be fixed by the said House for taking into consideration the Petition signed by the said C. D. complaining of an Undue Election or Return of a Member to represent the County, City, Borough, or Riding, [as the case may be,] in the House of Assembly of this Province, or complaining that no return has been made for the said County, City, Borough, or Riding, within the time limited by law, or that the return made for the said County, City, or Borough, Riding, is not a Return of a Member, or Members according to the requisition of the writ and shall appear before any Select Committee which shall be appointed by the House of Assembly for the trial of the same; and shall renew his said petition in every subsequent Session of this

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present Parliament, until a Select Committee shall have been appointed by the said House for the trial of the same, or until the same shall have been withdrawn by the permission of the said House, then this Recognizance to be void, otherwise to be of full force and effect.